

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Mary Merrill Anderson,

Complainant,
vs.

ORDER OF DISMISSAL

Hauser for 8th Ward Volunteer
Committee,

Respondent.

On September 16, 2005, Mary Merrill Anderson filed a Complaint with the Office of Administrative Hearings alleging a violation of Minn. Stat. § 211B.02 by the Hauser for 8th Ward Volunteer Committee. Ms. Anderson is a candidate at large for the Minneapolis Parks Board and Ms. Hauser is a candidate for the Minneapolis City Council (8th Ward).

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on September 19, 2005, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail and by facsimile transmission to the Respondent on September 19, 2005.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a prima facie violation of Minn. Stat. § 211B.02.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Mary Merrill Anderson against the Hauser for 8th Ward Volunteer Committee is DISMISSED.

Dated: September 20, 2005

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Complaint alleges that during the weekend before the September 13, 2005, primary election, the “Hauser for 8th Ward Volunteer Committee” distributed campaign material in the form of a 5.5” x 8.5” card. On the front side of the card were pictures of Marie Hauser, Mary Merrill Anderson, and Tom Nordyke.¹ Above the pictures of the candidates’ faces was the following statement:

VOTE TUESDAY SEPTEMBER 13TH
for Your 8th Ward Team

On the back side of the card was the same statement running horizontally across the top, with smaller pictures of the candidates arranged underneath in a vertical row. Alongside the pictures were boxes with check marks resembling a ballot. Dan Froehlich, another candidate for Minneapolis Park Board, was also listed although not pictured.

The Complaint maintains that the Hauser Committee violated Minn. Stat. § 211B.02, by falsely implying by this campaign material that Ms. Anderson endorses Ms. Hauser’s campaign. Ms. Anderson states in the Complaint that she never gave the Hauser Committee permission to use her name or picture and that she has never endorsed or supported Hauser’s campaign for City Council. In fact, Ms. Anderson has publicly endorsed the campaign of Jeff Hayden for 8th Ward Council Member.

Minn. Stat. § 211B.02 provides as follows:

211B.02 False Claim of Support.

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

The first sentence of this statute prohibits a candidate from falsely stating *or implying* that she has the endorsement or support of a “major political party or

¹ Like the Complainant, Tom Nordyke is an at large candidate for the Minneapolis Parks and Recreation Board.

party unit or of an organization.” In *Matter of Contest of General Election [Graves v. Meland]*,² the Minnesota Supreme Court construed the words “political party or unit” to mean only organizational units of the party and not individuals.³ Ms. Hauser’s campaign material does not falsely state or imply that she has the support or endorsement of a major political party or party unit or organization. Thus, the first sentence of section 211B.02 does not apply here.

The second sentence of the statute prohibits a candidate from “stating in written campaign material” that she has the support or endorsement of an individual without first getting permission from the individual to do so. Nowhere in the written campaign material at issue does it *state* that Ms. Hauser has Ms. Anderson’s support. However, the material *implies* that Ms. Hauser has Ms. Anderson’s support and that they are part of an “8th Ward Team.” The question presented is whether an implication of support is sufficient to show a violation of section 211B.02.

Minn. Stat. § 211B.02 is a criminal statute, violation of which is a misdemeanor.⁴ Therefore, the rule of strict construction of penal statutes must be applied notwithstanding the civil nature of the proceedings before the Administrative Law Judge.⁵ According to the canons of construction applicable to Minnesota statutes, words and phrases are generally construed “according to their common and approved usage.”⁶ The common definition of the word “state” is “to set forth in words.”⁷ In contrast, the word “imply” is commonly defined to mean “to indicate by inference, association, or necessary consequence rather than by direct statement.”⁸ The Administrative Law Judge concludes that a strict construction of the second sentence of section 211B.02 requires that the alleged false support or endorsement of an individual be based on an explicit written statement and not merely an implication.

The fact that the first sentence of section 211B.02 prohibits candidates from falsely stating or implying political party endorsements also supports the conclusion that the Legislature intentionally chose to exclude implications of support when it came to the individual endorsements addressed in the second sentence of 211B.02. A basic rule of statutory construction is that the express mention of one thing in a statute implies the exclusion of another.⁹ Or, to state it another way, to “include one thing implies the exclusion of the other.”¹⁰ The Legislature could have easily written the second sentence of the statute to

² 264 N.W.2d 401 (Minn. 1978).

³ 264 N.W.2d at 404 (discussing Minn. Stat. § 210A.02, predecessor to Minn. Stat. § 211B.02).

⁴ Minn. Stat. § 211B.19 provides that a violation of chapter 211B for which no other penalty is provided is a misdemeanor.

⁵ *In the Matter of the Contest of General Election [Graves v. Meland]*, 264 N.W.2d 401, 403 (Minn. 1978).

⁶ Minn. Stat. § 645.08(1).

⁷ American Heritage Dictionary 1327 (3rd ed. 1993).

⁸ Merriam-Webster Online, www.m-w.com.

⁹ See, *Green-Glo Turf Farms, Inc. v. State*, 347 N.W.2d 491 (Minn. 1984).

¹⁰ Black’s Law Dictionary 620 (8th ed. 2004) (defining the textual canon *expressio unius est exclusio alterius*).

prohibit candidates from stating *or implying* in written campaign material that the candidate had an individual's support or endorsement, but it did not do so.

However ill-advised it may have been for the Hauser Committee to issue this campaign material without the express permission of Ms. Anderson, it does not amount to a violation of section 211B.02. Because the Hauser campaign did not state in the written campaign material that Ms. Hauser had Ms. Anderson's support or endorsement, the Complaint fails to identify a prima facie violation of Minnesota Chapter 211B.02 and therefore is dismissed.

B.L.N.